



Federal Communications Commission
Washington, D.C. 20554

October 23, 2003

DA 03-3346

Mr. Edward W. Hummers, Jr., Esq.
Counsel for Lake Cedar Group LLC
Holland and Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, DC 20006-6801

Re: Applications for Modification of Analog and
Digital Television Construction Permits
KCNC-TV and DT, Denver CO
KMGH-TV and DT, Denver, CO
KUSA-TV and DT, Denver, CO
KTVD-TV and DT, Denver, CO
File Nos. BMPCDT-19981231KE,
BMPCDT-20000421AAV, BMPCDT-
20000501ADD, BMPCDT-20000501ADN,
BPCT-20020801ABC, BPCT-20020813ABA,
BMPCT-20020813ABP and BPCT-
20020909AAT
Facility ID: 23074, 40875, 47903 and 68581

Dear Mr. Hummers:

In this letter, we consider the pending applications of KCNC-TV and DT, Denver, Colorado; KMGH-TV and DT, Denver, Colorado; KUSA-TV and DT, Denver, Colorado; and KTVD-TV and DT, Denver, Colorado (Stations) for modification of their analog licenses and digital television (DTV) construction permits. The applications are opposed by Canyon Area Residents for the Environment (CARE). For the reasons set forth below, we deny CARE's petition to deny and grant the applications.

The Stations are part of the Lake Cedar Group, LLC (Lake Cedar) and are seeking to construct a new communications tower at the Lookout Mountain antenna farm near Denver, Colorado. The tower will house both the Stations' analog and DTV facilities. Lake Cedar proposed a similar tower in 1998 and obtained Commission's approval for their DTV facilities.¹ The tower proposal, however, was initially denied local zoning approval by Jefferson County, Colorado officials.

¹ See File Nos. BPCDT-970616KH, BPCDT-980729KL, BPCDT-980731KI and BPCDT-980731LH.

Lake Cedar then developed a modified version of its Lookout Mountain tower and, in 2002, filed the above-referenced applications. Lake Cedar recently received approval by Jefferson County for its modified tower.²

CARE raises four matters in opposition to Lake Cedar's modified tower. CARE argues that operation of the Stations' analog and DTV facilities from the modified tower would not comply with the following Commission Rules: (1) protection of the radio receiving zone at Table Mountain, Boulder County, Colorado (Section 73.1030(b)); (2) compliance with the radiofrequency radiation exposure limits (Section 1.1310); (3) protection of historic sites (Section 1.1307(a)(4)); and (4) protection of Indian religious sites (Section 1.1307(a)(5)).

Commission staff recently concluded that the Lake Cedar modified tower would comply with the Table Mountain protection requirements set forth in Section 73.1030(b) of the Rules.³

CARE apparently does not attempt to argue that the Lake Cedar proposal fails to comply with our radiofrequency exposure rules, but rather complains that RF measurements were taken improperly by Commission staff when the county was considering radiofrequency exposure issues during the local zoning proceeding. This complaint about Jefferson County's consideration of the matter belongs before Jefferson County, not before this Commission. We do note that CARE acknowledges that the measurements were taken according to the published procedures at that time, with which CARE takes issue. CARE's dissatisfaction with those procedures does not warrant consideration here. We also note that Lake Cedar submitted a study that demonstrates full compliance with the radiofrequency exposure limits. ("Updated Lookout Mountain RF Emissions Study," Randall L. Musselman, Ph.D., P.E., April 10, 2003,) This study is not contested by CARE.

With respect to the preservation of historic sites, that issue was considered by Jefferson County officials as part of the local zoning process. Those officials found that the modified tower "is in substantial conformance with the Central Mountains Community Plan. . . ." The Central Mountains Community Plan provides that development such as the Lake Cedar modified tower must "[P]reserve, rehabilitate and protect the geological, paleontological, archaeological, and historical sites which are significant links to the community's past, present and future." We find no evidence to contradict the decision of the Jefferson County officials in this regard. We conclude, therefore, that Lake Cedar has complied with Section 1.1307(a)(4) of our Rules.

We also conclude that Lake Cedar has complied with Section 1.1307(a)(5) our rules with respect to protection of Indian religious sites. That issue was also considered by Jefferson County officials as part of their local zoning approval. In conjunction with the local

² See Board of County Commissioners of County of Jefferson, State of Colorado, Resolution CC03-410.

³ See "Letter to Edward W. Hummers, Jr. from the Chiefs of the Office of Engineering and Technology and the Media Bureau," August 25, 2003.

zoning process, Lake Cedar contacted a local tribal official and provided an opportunity for comment on its modified tower. No response was received. We conclude that Lake Cedar's modified tower would not adversely affect Indian religious sites.

The above facts considered, we conclude that the public interest will be served by grant of the Stations' applications.

Wherefore, the petition to deny of Canyon Area Residents for the Environment IS DENIED.

Further, the applications of KCNC-TV and DT, Denver, Colorado; KMGH-TV and DT, Denver, Colorado; KUSA-TV and DT, Denver, Colorado; and KTVD-TV and DT, Denver, Colorado (File Nos. BMPCDT-19981231KE, BMPCDT-20000421AAV, BMPCDT-20000501ADD, BMPCDT-20000501ADN, BPCT-20020801ABC, BPCT-20020813ABA, BMPCT-20020813ABP and BPCT-20020909AAT) for modification of their analog licenses and digital construction permits ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Office of Broadcast License Policy
Media Bureau

cc: Deborah Carney, Esq. – Counsel for CARE